VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Shop and Premises; accuracy of rateable value; rental and comparable evidence considered; Allowance for width to depth ratio; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Dismissed.

RE: 1-3 Chepstow Road, London, W2 5BL

APPEAL NUMBER: CHG100046554

BETWEEN:	Haresh Desai T/A Infusion Haberdashery	Appellant
	(Represented by Altus Group)	
	and	
	David Jackson	Respondent
	(Valuation Officer)	

PANEL: Mr A Jobanputra (Senior Member)
Mr J Percival

CLERK: Mr L Bertie

REMOTE HEARING ON: 23 October 2020

APPEARANCES Mr J McCarthy of Altus Group for the Appellant.

Mr C Cates for the Valuation Officer.

Summary of decision

1. Appeal dismissed.

Introduction

2. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £70,500 from 1 April 2017, with a description of Shop and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage, the Valuation Office Agency (VOA) reduced the RV to £55,500 and altered the rating list with effect from 1 April 2017. The appeal was received on 27 February 2020 against the Valuation Officer's (VO) Decision Notice of 20 January 2020 in respect of the appeal property and the RV of £55,500. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £55,500 RV was deemed as correct. The proposed RV sought by the appellant was £52,000.

3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

4. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

5. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

6. Mr McCarthy appeared on behalf of the Appellant as both surveyor-advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr McCarthy's declaration of truth included a statement that he was instructed on a contingency fee basis. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client's case.

7. The Valuation Officer's representative, Mr Cates, advised the panel that he appeared as an advocate for the case but was an expert on general valuation matters.

8. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations, and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

9. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

10. The subject property comprises a ground floor shop and is made up of two merged units. It is situated opposite other retail units in Chepstow Road. The area of the subject property is agreed by the parties to be 92.99 m^2 in terms of zone A (ITZA) with a zone A rate of £800 per m^2.

Issue

11. The issue between the parties concerned the RV of the appeal property and specifically, the amount of width to depth allowance that should apply. Mr McCarthy, for the Appellant, sought a reduction to £52,000 RV based on a width to depth allowance of 30%. Mr Cates, for the VO, sought to defend the existing RV of £55,500 which was based on the existing width to depth allowance of 20%.

Decision and reasons

12. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

13. In line with the decision in Lotus and Delta v Culverwell (VO) [1976] RA 141 , Mr McCarthy suggested that the rent on the subject property should be taken as a starting point, and it reflected the individual nature of the appeal property being an isolated, ageing property being situated underneath residential flats and behind concrete pillars. In his opinion, the rent passing on the appeal property was lower than others in this locality because of these factors and consequently the rateable value should be reduced to reflect this fact.

14. In his challenge, Mr McCarthy had given details of the rent passing on the subject property, which was £52,000 pa effective from 28 April 2015 and related to a ten-year lease agreed on a

review. He had analysed this rent to £590 per m^2 ITZA which he argued indicated that the adopted rate of £ 800 per m^2 was excessive and should be reduced. However, he contended that if there was no reduction in the £m^2, then there should be an allowance for width/-depth ratio of the property of 30% to reflect the passing rent.

15. Mr Cates stated that although the rent of the appeal property was close to the AVD, it was out of line with other rents passing in the locality. In accordance with Lotus and Delta v Culverwell (VO) [1976] RA 141, the rents of comparable properties in the locality should also be given weight. The basket of evidence, which included the rent on the subject property, and the rents on a number of comparable properties, was in his opinion, indicative that the base rate of £800.00 per m^2 ITZA for the subject property, was not excessive. Mr Cates had provided details of three comparable retail properties close to the appeal property in Chepstow Road to support the existing rate of £800 per m^2 for the subject property. The first of these was Shop and Premises, BST & GRD FLR 14 Chepstow Road London W2 5BD which was 24.83 per m^2 ITZA. It was a new letting from 1 August 2014 of £30, 000 on a 13 year lease with a 3 year rent review with a one month fit out which was ignored. This rent analysed at £1,208/m2; Shop and Premises, BST & GRD FLR 70 Chepstow Road London W2 5BE- which was 24.29 m^2 ITZA was a new letting from 1 November 2014 of £25, 056 which was a new letting on a 10 year lease with 5 yearly rent reviews. Alterations were carried out costing £40,500 and half of this amount was taken over the lease term. The rent analysed at £1,145/m^2 and Shop and Premises, GRD FLR 57 Chepstow Road London W2 5BP which was 21.88 per m^2 ITZA. It was a new letting from 5 March 2013 of £25, 500 which analysed at £1,165/m2 as a new letting with 5 yearly reviews and three months' rent free assumed for fit out. Moreover, there was further rental evidence submitted on Grnd Flr, 2A Chepstow Road London W2 5BH; Bst and Grnd Flr, 12 Chepstow Road; Bst and Grnd Flr 59 Chepstow Road and 78 Chepstow Road which showed rental evidence of reviews between 16 April 2013 and 10 December 2015. This evidence showed rents analysed between £2215. 14 - £823.09 per m^2.

16. The panel considered that either analysis based on new lettings or rent reviews would support the Valuation Officer's contention that the current rate of 800 per m^2 ITZA adopted for all of the comparable retail units on Chepstow Road was not excessive and this rate per m^2 was also applicable to the appeal property. The panel found no substance in the contention of the appellant's representative that there had been virtually a nil increase in rental levels in the locality for the 2010 Rating List compared to 2017 Rating List based on the nominal increase for the appeal property. This would suggest that there was no rental growth in 8 years between the AVD of 01-April-2008 and 01- April-2015. The panel noted that the 2010 Rating List Valuation figure was £52,000 rateable value and the contention of the Appellant's representative sought for this value to be adopted from the 2017 Rating List. The panel considered that this is not supported by the rental evidence submitted for the locality.

17. The panel was therefore of the opinion that the rate of £800 per m^2 adopted by the Valuation Officer's representative was supported by the basket of rental evidence provided.

18. The panel was referred to 9 retail properties in various parts of London by Mr McCarthy which showed allowances for width to depth between 15% to 30%. He contended that because the shop was only 4.1m deep leading to all of it being in Zone A, the individual nature of the appeal property being an isolated, ageing property being situated underneath residential flats and set back from the road behind pillars, an allowance of 30% was warranted to reflect this disability and this was supported by the rent passing. The Valuation Officer conceded that the shops unique layout warranted some allowance being awarded. The allowance of 20% adopted for the 2010 Rating List had therefore been adopted in order to reflect the physical disadvantage of the subject property.

19. The panel noted that the disability allowance of 5% for width to depth ratio had been carried over from the 2010 Rating List to the 2017 Rating List. However, it had been increased at the challenge stage by the Valuation Officer to 20% but the Zone A price m^2 of £800 had remained the same.

20. In determining that the zone A rate of £800 per m^2 did not appear excessive, the panel considered that no specific substantive evidence had been submitted by the Appellant's representative to show that the allowance for width to depth already given should be increased from 20% to 30% on the appeal property.

21. The appeal was therefore dismissed.

Date: 19 November 2020

Appeal number: CHG100046554